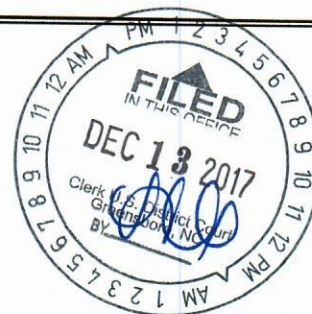


UNITED STATES DISTRICT COURT

for the

Middle District of North Carolina

Civil Division



Brian Zielny

Case No.

17CV1116

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Jury Trial: (check one) ☐ Yes ☒ No

Costco Wholesale

Keith Napalotano, Ryan Hansen, Ray Kowalski, John Cunhya

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Brian Zielny
Street Address	406 East Greenway Drive North
City and County	Greensboro Guilford
State and Zip Code	NC 27403
Telephone Number	336-880-7099
E-mail Address	epicuriaradio@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	Costco Wholesale
Job or Title <i>(if known)</i>	Employer
Street Address	999 Lake Drive
City and County	Issaquah
State and Zip Code	WA 98029
Telephone Number	(425) 313-8100
E-mail Address <i>(if known)</i>	

Defendant No. 2

Name	Keith Napolitano
Job or Title <i>(if known)</i>	Warehouse Manager - Greensboro Costco #339
Street Address	4201 W. Wendover Ave
City and County	Greensboro Guilford
State and Zip Code	NC 27407
Telephone Number	(336) 291-4013
E-mail Address <i>(if known)</i>	

Defendant No. 3

Name	Ryan Hansen
Job or Title <i>(if known)</i>	Front End Manager Warehouse #339
Street Address	4201 W. Wendove Ave.
City and County	Greensboro Guilford
State and Zip Code	NC 27407
Telephone Number	(336) 291-4013
E-mail Address <i>(if known)</i>	

Defendant No. 4

Name	John Cunhya
Job or Title <i>(if known)</i>	Assistant Front End Manager Warehouse #339
Street Address	4201 W. Wendover Ave
City and County	Greensboro Guilford
State and Zip Code	NC 27407
Telephone Number	(336) 291-4013
E-mail Address <i>(if known)</i>	

Defendant #5 Name: Ray Kislowski

Address: 4201 W. Wendover Ave

City/county: Greensboro Guilford

State/zip code NC 27407

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is

Name	Costco Wholesale
Street Address	4201 West Wendover
City and County	Greensboro Guilford
State and Zip Code	NC 27407
Telephone Number	(336) 291-4013

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to *(check all that apply)*:

☐ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

☒ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Other federal law *(specify the federal law)*:

☐ Relevant state law *(specify, if known)*:

☐ Relevant city or county law *(specify, if known)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

- ☐ Failure to hire me.
- ☒ Termination of my employment.
- ☒ Failure to promote me.
- ☒ Failure to accommodate my disability.
- ☒ Unequal terms and conditions of my employment.
- ☒ Retaliation.
- ☐ Other acts *(specify)*: _____

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s) _____ between November 2016 through September 5, 2017 (date of termination) _____

C. I believe that defendant(s) *(check one)*:

- ☐ is/are still committing these acts against me.
- ☒ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

- ☐ race _____
- ☐ color _____
- ☐ gender/sex _____
- ☐ religion _____
- ☐ national origin _____
- ☐ age *(year of birth)* _____ *(only when asserting a claim of age discrimination.)*
- ☒ disability or perceived disability *(specify disability)*
Attention Deficit Disorder and Paralyzed Left Arm

E. The facts of my case are as follows. Attach additional pages if needed.

Starting July 1994 until my untimely termination on September 5, 2017, I had been continuously employed by Costco Wholesale.

During my career I had been promoted repeatedly until reaching the position of: Photo Lab Manager/NorthEast Regional Trainer which I had done with excellence for a few years.

I relocated to Greensboro NC in September 2003. I had to take a pay cut and demotion. I had exceptional results as Photo Lab Supervisor. There had been few/no issues.

During that time I was awarded the company's highest honor, the President's Award. I was not recognized for this accomplishment by local management as suggested by corporate guidelines and was the only employee to ever receive such an honor at Costco #339.

In July of 2013 drastic unforeseen changes in my personal life had prevented my ability to continue as photo lab supervisor..

Management at that time had increased criticism and scrutiny as well as reprimanded me repeatedly until forcing my demotion to Full Time Cashier. The new position required 2 healthy arms and my left arm is paralyzed.

I had taken an extended leave of absence from July 2013 to July 2014. Upon my return in 2014 as a Cashier and through 2016 my work attendance continued with very few medically necessary interruptions. Overseeing management had changed around December 2016 , t I was not recognized for this accomplishment yet was the only employee to ever receive such an honor at Costco 339. My productivity was unrivaled with the other employees. Within my last nine months, and under new management, I was reprimanded more times than I had ever been, within all my years combined.

I experienced discrimination and retaliation from both upper management such as Ray Kislowksi, but mostly with the new management, Keith N, Ryan Hanson, and John Cunhya. All Defendants either modified existing accommodations or made less than accurate performance evaluations which was re-written approximately four times before being administered. However, my review in July of 2016 was stellar. Even with an amazing review, I was turned down for a position that I had much previous experience doing. The position was given to someone fairly new to the company with no previous experience.

I was treated unethically in more than one instance. For example, I witnessed an employee commit a "hit and run" and was able to take a picture of the licence plate with my phone. After reporting the incident, I was given a letter of appreciation yet given a warning not to use my phone, (even to record illegal activity as evidence). The employee was suspended eventually and reluctantly fired by management.

Because of the immediate stopping of previous accommodations that were being taken away from and my ultimate termination I believe that management has repeatedly behaved in a harassing retaliatory and discriminatory fashion.

In conclusion, this is a brief list of some of the harassing retaliatory or discriminatory actions I had endured and reported to Costco corporate HR and then the EEOC upon my untimely and unjustifiable termination on September 5, 2017. On September 14, 2017 the EEOC had given me a Right to Sue notice.

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)*

September 7, 2017

- B. The Equal Employment Opportunity Commission *(check one)*:

☐

has not issued a Notice of Right to Sue letter.

☒

issued a Notice of Right to Sue letter, which I received on *(date)* 09/17/2017

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

☐

60 days or more have elapsed.

☐

less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Lost Wages until Retirement	(18 years x \$55,000)	= \$990,000.00
Lost Employer 401k Contribution	(18 years x \$4,500)	= \$81,000.00
Punitive Damages (est. 14 H/D/R occurrences x \$7,500)		= \$105,000.00
Exemplary Damages for Repeated wrongful Suspensions		= \$550,000.00
Total:		\$1,726,000.00

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: Dec 13, 2017

Signature of Plaintiff

Printed Name of Plaintiff

Brian Zielay

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC

435-2017-00853

_____ and EEOC
State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Brian Zielny

Home Phone (Incl. Area Code)

(336) 880-7099

Date of Birth

1970

Street Address

City, State and ZIP Code

406 East Greenway Dr., Greensboro, NC 27403

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

COSTCO 339 - GREENSBORO

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(336) 291-4010

Street Address

City, State and ZIP Code

4201 West Wendover, Greensboro, NC 27407

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☒ DISABILITY ☐ GENETIC INFORMATION
☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

09-05-2017

☒

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was employed as a Cashier with the above Respondent. I had been employed with Respondent since on or about July 1994.

Management changed in January 2017, I complained about how I was targeted and was not accommodated for my medical issues starting in March 2017 until I was terminated. After I complained, I was subjected to more harassment where I was not being accommodated by my schedule being constantly changed and not given to me ahead of time as required. Management required me to work on established days off causing me to call out, be counseled, and suspended. I was terminated September 5, 2017, for excessive absenteeism and policy violation

I believe I was being discriminated against because of my medical issues and was disciplined and schedules changed in retaliation for requesting accommodation, in violation of Americans with Disabilities Act of 1990, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Sep 14, 2017

Date

Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)